

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNITED STATES OF AMERICA

v.

ROBERT HUNTER BIDEN,

Defendant.

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Criminal Action No. 1:23-cr-00061-MN

MR. BIDEN'S MOTION TO HOLD PRETRIAL DEADLINE FOR MOTIONS *IN LIMINE* IN ABEYANCE UNTIL THE MAY 14, 2024 STATUS CONFERENCE

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Following the Court's May 9, 2024 Scheduling Order (D.E.112), and with the understanding that the Parties are presently scheduled to appear before Your Honor on Tuesday, May 14, 2024 at a status conference (D.E.115, Order), Mr. Biden respectfully moves to hold the pretrial deadline for filing motions *in limine* (May 13, 2024) in abeyance until the status conference this coming Tuesday. There exists good cause to do so:

1. At 10:00 AM on May 10, defense counsel and the government's counsel conferred by telephone to discuss, among other things, the current pretrial schedule, including the deadline for motions *in limine* presently set for May 13, 2024. (D.E.112 at ¶4.) Pursuant to the Court's Scheduling Order, during that call the parties exchanged the scope and subject matter of potential motions *in limine* and whether the non-moving party opposes such motions, and both sides agreed to take back and consider their respective positions in advance of the current deadline for filing such motions. The parties are actively doing so as of the time of this filing.

2. At the conference on Tuesday, Mr. Biden anticipates raising with the Court several considerations that merit, in Mr. Biden's view, a reasonable but slightly modified pretrial and trial schedule to take into account all that must still be done in advance of any potential trial in Delaware—including, for example, the status of our finding and retaining potential defense experts, preparing proposed jury instructions, preparing expert disclosures, filing and responding to motions *in limine*, preparing exhibit and witness lists, and working with the Court and the government on an adequate voir dire and jury selection process (i.e., a written questionnaire) that takes into account the high profile nature of this prosecution. As they did with the Special Counsel, Mr. Biden's counsel assures the Court that it has been, and continues to be, working diligently to prepare as thoroughly as possible under the Court's current pretrial schedule, despite all that has had to be prepared and drafted in recent weeks in litigation in two Courts of Appeals and in trial

courts on both coasts, but Mr. Biden's counsel cannot, at this time, adequately meet the May 13 deadline for filing motions *in limine*.

3. In addition, following the Third Circuit motion panel's per curiam Order yesterday (*United States v. Biden*, No. 24-1703, D.E.17-1 (3d Cir. May 9, 2024)), Mr. Biden will seek panel rehearing and rehearing *en banc* of that decision. Mr. Biden also may address some issues raised in that Order by filing additional motions in this Court. Live appellate issues before the Third Circuit may cause a further delay of proceedings in this Court.

4. Relatedly, Mr. Biden and the Special Counsel remain in active litigation in the Ninth Circuit and, yesterday, the California District Court indicated that it would like to proceed to trial quickly if the Ninth Circuit permits litigation to go forward. Depending on what happens in the California matter, Mr. Biden may face the burden of having to prepare for or actually do two trials involving different issues on opposite sides of the country at once, involving the same counsel. If such a burden does arise, Mr. Biden may need to seek an accommodation from this Court, the California court, or both.

5. Mr. Biden makes this request of the Court to hold the motions *in limine* pretrial deadline in abeyance by only one day, from May 13 to May 14, so defense counsel has an opportunity to discuss these considerations, and others, with Your Honor on Tuesday and to set forth a schedule going forward that is both realistic and reasonable given the outstanding appellate and other legal issues. This is not being done for any other reason except to assure, with all pending issues, that defense counsel can provide Mr. Biden with competent and effective assistance of counsel.

6. This is Mr. Biden's first request to hold a pretrial deadline in abeyance, and courts routinely hold pretrial deadlines in abeyance while the parties work out procedural and other

scheduling considerations. Moreover, by holding this deadline in abeyance, neither Mr. Biden nor the government will be required to prematurely file their motions *in limine* while they continue to discuss which motions may be necessary, and before this Court has an opportunity to weigh a revised pretrial schedule with counsel. Neither party will be prejudiced by having the motions *in limine* issue postponed until after the status conference.

7. Accordingly, Mr. Biden respectfully requests that the Court hold the pretrial motions *in limine* deadline in abeyance through the status conference scheduled for Tuesday, May 14, until both parties have an opportunity to address the scheduling and appellate considerations with the Court.

Respectfully submitted,

Dated: May 10, 2024

/s/ Abbe David Lowell

Abbe David Lowell

Christopher D. Man

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of May, 2024, I filed the foregoing Motion with the Clerk of Court using the CM/ECF system, which will send a notification of such filing to all counsel of record.

/s/ Abbe David Lowell
Abbe David Lowell

Counsel for Robert Hunter Biden